Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Ors

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 21–179 OF 1995
MOHD GHAZALI J
13 JANUARY 1996

Civil Procedure *— Pleadings — Striking out statement of claim — Ground: disclosing no reasonable cause of action — Application for declaration that decision by State Authority to acquire land null and void and of no effect — Plaintiff dispossessed of land by acquisition in due course of law — Whether plaintiff's statement of claim disclosed any reasonable cause of action — Rules of the High Court 1980 O 18 r 19(1)*

Land Law *— Acquisition of land — Acquisition beneficial to the economic development of Malaysia or to the public generally — Whether State Authority had misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition was beneficial — Whether State Authority had acted ultra vires the provisions of the Act in acquiring the land —Whether declaration in Form D is conclusive as to the purpose for which the land is required — Whether it was open to the plaintiff as an affected landowner to attempt to invalidate the acquisition — Land Acquisition Act 1960 ss 3(b) & 8(3)*

Land Law *— Acquisition of land — Declaration of acquisition — Whether declaration in Form D is conclusive as to the purpose for which the land is required — Whether it was open to the plaintiff as an affected landowner to attempt to invalidate the acquisition — Land Acquisition Act 1960 s 8(3) & Form D*

Land Law *— Acquisition of land — Acquisition by state authority — Whether acquisition amounts to depriving the landowner of his land — Whether acquisition was in accordance with law — Whether acquisition was contrary to the constitutional protection to ownership of land — Federal Constitution art 13(1)*

Land Law *— Acquisition of land — Purpose for which land needed — Whether land acquired mala fide — Whether decision of the State Authority to acquire land was taken in bad faith — Whether State Authority had deliberately and wilfully disregarded landowner's application to develop the land — Whether decision was so perverse that it was not only a malice in law but also a malice in fact — Whether acquisition was carried out pursuant to the provisions of the Land Acquisition Act 1960 — Land Acquisition Act 1960 ss 3(b) & 8(3)*

Land Law *— Acquisition of land — Breach of natural justice — Whether the Land Acquisition Act 1960 imposed any obligation for a pre-acquisition hearing*

The plaintiff was the registered proprietor of a piece of land ('the land') until it was acquired by the State Authority, Johor ('the State Authority') in 1993. The plaintiff claimed that in early 1990, it had decided to develop and convert the land into a mixed commercial and residential development. Its representatives met the then Menteri Besar of Johor to discuss its plans for such development and the Menteri Besar had agreed in principle with the application. However up to this date, the plaintiff claimed that it had not been informed of the status of its application. In June 1993, a notification in Form D

pursuant to s 8 of the Land Acquisition Act 1960 ('the Act') was issued by the Commissioner, Lands and Mines Office, Johor declaring that the lands specified in the schedule to the notification, which included the land, were needed for the purpose of the 'Second Malaysia, Singapore Causeway project and the Development of the Gelang Patah area'. In July 1993, an endorsement was made on the register document of title of the land with regard to the acquisition. In March 1995, the Land Administrator issued a notice of award of compensation in the sum of RM89,658,000 to the plaintiff (ie in Form H) which the plaintiff claimed worked out to about 80 cent per square foot. Subsequently, it came to the knowledge of the plaintiff that the third defendant (a subsidiary of the group which was to carry out the above-mentioned government project) was proposing to develop the land in a very similar manner as the plaintiff had itself proposed in its development plan and that the third defendant was offering for sale the land at RM17 per square foot.

The plaintiff filed an action against the defendants and prayed for, inter alia, a declaration that the decision by the State Authority to acquire the land is null and void and of no effect, damages and costs. The plaintiff attacked the validity of a purported acquisition by the State Authority and alleged that the State Authority had misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition 'is beneficial to the economic development of Malaysia ... or to the public generally' within the meaning of s 3(b) of the Act, and as a consequence, the State Authority had acted ultra vires the provisions of the Act; therefore, the decision of the State Authority in acquiring the land was a nullity and not binding in law. The issue was whether it was open to the plaintiff as an affected landowner to attempt to invalidate the acquisition.

The plaintiff also alleged that the decision of the State Authority to acquire the land was taken in bad faith, namely that the Menteri Besar, the officers of the relevant government departments, the State Authority and also the third defendant knew about the plaintiff's plan to develop the land. It also alleged that the defendants deliberately and wilfully disregarded its application to develop the land. The plaintiff contended that the decision of the State Authority was so perverse that it was not only a malice in law but also a malice in fact. The plaintiff further contended that the State Authority had acted in flagrant abuse of its powers and/or oppressively, arbitrarily or unconstitutionally and thus sought to recover damages from each of the defendants. The plaintiff further contended that art 13(1) of the Federal Constitution gives constitutional protection to the plaintiff's right to ownership of the land. It was also submitted that there was a duty in law for the State Authority to give the plaintiff an opportunity of being heard before it took the decision to acquire the land and that by failing to do so it had acted in breach of the rules of natural justice thereby rendering its decision a nullity.

The first and second defendants filed an application pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980 applying for an order that the statement of claim be struck out on the ground that it discloses no reasonable cause of action.

Held, allowing the application to strike out the pleading with costs:

(1) The amendment made to s 3(b) of the Act has widened the powers of a State Authority, viz a State Authority may now acquire any land which is needed by any person or corporation, for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public.

In the instant case, one of the objects of the acquisition was for the purpose of the proposed construction of a second causeway between Malaysia and Singapore. The other object of the acquisition was for the purpose of developing the Gelang Patah area to develop a new township. The creation of a new township in the Gelang Patah area would definitely amount to a purpose which was beneficial to the economic development of that part of the State of Johor and would also be beneficial to the public generally and also that part of the public residing within the surrounding areas (see pp 146H–I and 147B–E).

(2) Section 8(3) clearly provides that the declaration in Form D is conclusive as to the purpose for which the scheduled lands are required which would mean that the State Authority is the best judge of what amounts to a purpose which is beneficial to economic development within the contemplation of s 3(b). In the instant case, the State Authority had taken the land with the object of using it for a purpose authorized by the legislature and therefore the court could not restrain it from doing so. The purpose of the acquisition has been spelt out in the declaration and was conclusive of the actual existence of that purpose and it was also sufficiently specific to satisfy the requirements of s 3(b).

Thus, it was not possible to invalidate the declaration collaterally by showing that an intention to use it for the purpose notified did not exist. The notification of acquisition was therefore made decisive and concluded the whole matter and it followed that an affected landowner may not got behind the notification, otherwise it would make s 8(3) meaningless (see pp 147I and 148A).

Moreover, the Act confers wide powers on the State Authority to acquire alienated lands and has prescribed a special statutory formulae which ostensibly excludes judicial review; the only matters that can be litigated by the court are limited to those prescribed in Pt V of the Act. Parliament has thus provided what it considers sufficient means for securing adequate compensation to the landowners affected by the acquisition and has left it to the

State Authority to decide to what extent it will be useful to that authority to exercise its statutory powers (see p 148I); *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore* [1975] 1 MLJ 241 and *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands and Mines, Penang* [1977] 2 MLJ 45 followed.

(3) The plaintiff's proposal to develop and 'convert' the land into a mixed commercial and residential development which has been 'approved in principle' by the Menteri Besar would require a formal approval from the Executive Council ('the Exco') as such a proposal would necessitate an application to the Exco for an alteration of category of land use under the provisions of the National Land Code 1965. The Menteri Besar acting alone was not the Exco and any approval given by him whilst acting alone could not bind the Exco. He only presided over the Exco. That being the position, there was no merit in the plaintiff's allegation that the first and second defendants had deliberately and wilfully disregarded the plaintiff's application for development of the land. The plaintiff's plan to develop the land could never materialize unless the necessary approvals from the Exco had been obtained (see p 151F–H).

(4) Upon completion of the acquisition proceedings, the land becomes State land and the State Authority is authorized to alienate it to the person or corporation concerned. Upon its disposal by the State Authority to the person or corporation concerned, that person or corporation is at liberty to dispose or use or deal with the land to achieve the purpose of the acquisition and according to s 68A of the Act such action cannot invalidate the acquisition of the land. Therefore, the plaintiff's averments that the State Authority had acted ultra vires because the third defendant was proposing to develop the land in a very similar way as the plaintiff had itself earlier proposed to the Menteri Besar did not disclose a cause of action (see pp 152B–H, 153I and 154A).

(5) The plaintiff's contention that art 13(1) of the Federal Constitution gives constitutional protection to the plaintiff's right to ownership of the land was irrelevant. When a State Authority acquires any alienated land, that action amounts to depriving the landowner of his land, but it is acting in accordance with law, namely the Act itself. The Act is clearly a law which provides for the compulsory acquisition of land but it is also a law which provides that the dispossessed landowner will receive adequate compensation (see p 153B–E).

(6) There is nothing in the Act imposing any obligation for a pre-acquisition hearing in marked contrast to the specific provisions of an inquiry and hearing in respect of the quantum of compensation payable (see p 153H–I); *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 followed.

(7) So long as the pleading discloses some cause of action or raises some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleading to be struck out. It is only in plain and obvious cases that recourse should be had to the summary process under O 18 r 19(1).

In this case, the plaintiff's action against the first and second defendants was 'obviously unsustainable'. The pleadings did not at all disclose some cause of action or even raise any question fit to be decided. Furthermore, s 8(1) of the Specific Relief Act 1950 provides that if any person is dispossessed without his consent of immovable property *otherwise than in due course of law* he may, by suit, recover possession thereof and s 8(3) provides that no suit under the section shall be brought against any government in Malaysia. The plaintiff had, by virtue of the acquisition by the State Authority, been dispossessed of its land in due course of law and even if assuming that he proved that there was malice, he could not bring a suit against the State Government of Johor in the face of such a provision (see p 154E–I); *Abu Bakar bin Hj Yusuf v Mohamed Hamzah bin Hanafiah & Anor* [1978] 2 MLJ 78, *Moore v Lawson* (1915) 31 TLR 418 (CA); *Wenlock v Moloney & Ors* [1965] 1 WLR 1238; [1965] 2 All ER 871, *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86, *Attorney General of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274 and *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1 followed.

(8) Malice in law is wrongful conduct which violates a right of the plaintiff and malice in fact means no more than an indirect motive. The exercise by a person of a legal right does not become illegal because the motive of action is improper or malicious. In the instant case, there had been no violation of the plaintiff's rights as an acquisition exercise carried out pursuant to the provisions of the Act by the State Authority or any of its servants or representatives cannot at all amount to a violation of a right. Under the circumstances, the plaintiff could not sue the first and second defendants as wrongdoers when no wrong had been committed by either defendant (see p 155A–C); *Bradford Corp v Pickles* [1895] AC 587 followed.

Obiter:

If it is sought to establish liability against the State Authority under the provisions of the Act, it should be the land administrator in his office — and not the State Government — which ought to be joined in the proceedings. The plaintiff's stand that the first defendant (ie the State Government of Johor) and/or the second defendant (ie the Land Administrator, Johor) is the State Authority as defined in s 2(1) of the Act is incorrect (see p 155E–F); *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 followed.

[Bahasa Malaysia summary

Plaintif merupakan tuan punya berdaftar sebidang tanah ('tanah tersebut') sehingga ia diambil oleh Pihak Berkuasa Negeri Johor ('Pihak Berkuasa Negeri') pada tahun 1993. Plaintif menuntut bahawa pada awal tahun 1990, ia telah memutuskan untuk memajukan dan menukar tanah tersebut kepada pembangunan perdagangan dan kediaman. Wakil-wakilnya telah berjumpa dengan Menteri Besar Johor pada masa itu untuk membincangkan pelan bagi pembangunan demikian dan Menteri Besar telah bersetuju dengan permohonan dalam prinsip. Walau bagaimanapun sehingga tarikh ini, plaintif menuntut bahawa ia tidak diberitahu tentang taraf permohonannya. Pada bulan Jun 1993, pemberitahuan dalam Borang D menurut s 8 Akta Pengambilan Tanah 1960 ('Akta tersebut') dikeluarkan oleh Pesuruhjaya, Pejabat Tanah dan Galian, Johor dengan menyatakan bahawa tanah tersebut yang dinyatakan dalam jadual kepada pemberitahuan, yang termasuk tanah tersebut, diperlukan untuk tujuan 'projek Tambak Malaysia, Singapura Kedua dan Pembangunan kawasan Gelang Patah'. Pada bulan Julai 1993, pengindorsan dibuat atas dokumen hakmilik daftaran tanah tersebut berkenaan dengan pengambilan. Pada bulan Mac 1995, Pentadbir Tanah mengeluarkan notis award pampasan berjumlah RM89,658,000 kepada plaintif (iaitu dalam Borang H) yang mana plaintif menuntut bersamaan dengan kira-kira 80 sen untuk setiap kaki persegi. Berikutnya, ia diketahui oleh plaintif bahawa defendan ketiga (suatu subsidiari kumpulan yang akan melaksanakan projek kerajaan tersebut) bercadang memajukan tanah tersebut dalam cara yang sama seperti yang telah dicadangkan oleh plaintif dalam pelan pembangunannya dan bahawa defendan ketiga menawarkan tanah tersebut untuk dijual pada harga RM17 untuk setiap kaki persegi.

Plaintif memfailkan suatu tindakan terhadap defendan-defendan dan memohon, antara lain, suatu perisytiharan bahwa keputusan oleh Pihak Berkuasa Negeri untuk mengambil tanah tersebut adalah tak sah dan terbatal dan tidak berkesan, ganti rugi dan kos. Plaintif mempersoalan kesahihan pengambilan oleh Pihak Berkuasa Negeri dan mengatakan bahawa Pihak Berkuasa Negeri telah salah tafsir kuasa statutorinya dan/atau salah tindak di sisi undang-undang apabila ia memutuskan bahawa pengambilan 'memanfaatkan pembangunan ekonomi Malaysia ... atau masyarakat awam pada umumnya' dalam lingkungan makna s 3(b) Akta tersebut, dan sebagai akibatnya, Pihak Berkuasa Negeri telah bertindak ultra vires peruntukan Akta tersebut; dengan itu, keputusan Pihak Berkuasa Negeri dalam mengambil tanah tersebut adalah suatu pembatalan dan tidak terikat dari segi undang-undang. Isu adalah sama ada ianya terbuka kepada plaintif sebagai pemilik tanah yang terjejas untuk cuba menyebabkan pengambilan itu menjadi tak sah.

Plaintif juga mengatakan bahawa keputusan Pihak Berkuasa Negeri untuk mengambil tanah diambil dengan niat jahat, iaitu bahawa Menteri Besar, pegawai-pegawai jabatan kerajaan yang

A relevan, Pihak Berkuasa Negeri dan juga defendan ketiga tahu tentang pelan plaintif untuk memajukan tanah tersebut. Ia juga mengatakan bahawa defendan-defendan dengan sengaja mengabaikan permohonannya untuk memajukan tanah tersebut. Plaintif menghujahkan bahawa keputusan Pihak Berkuasa Negeri adalah begitu terpesong hinggakan ia bukan sahaja niat jahat dalam undang-undang tetapi juga niat jahat dalam fakta. Plaintif selanjutnya menghujahkan bahawa Pihak Berkuasa Negeri telah bertindak dengan menyalahguna kuasanya dan/atau secara menindas, arbitrari atau tidak mengikut perlembagaan dan justeru itu meminta ganti rugi dari setiap defendan. Plaintif seterusnya menghujahkan bahawa perkara 13(1) Perlembagaan Persekutuan memberikan kuasa perlindungan perlembagaan kepada hak plaintif untuk memiliki tanah tersebut. Ia juga dihujahkan bahawa terdapat kewajipan di sisi undang-undang untuk Pihak Berkuasa Negeri memberi peluang kepada plaintif supaya didengar sebelum ia mengambil keputusan untuk mengambil tanah tersebut dan bahawa dengan kegagalan untuk berbuat demikian ia telah bertindak melanggar rukun keadilan asasi lalu menyebabkan keputusannya menjadi suatu pembatalan.

Defendan-defendan pertama dan kedua memfailkan permohonan menurut A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 yang memohon satu perintah bahawa pernyataan tuntutan dibatalkan atas alasan bahawa ia tidak mendedahkan sebarang kausa tindakan yang munasabah.

Diputuskan, membenarkan permohonan untuk membatalkan pliding dengan kos:

(1) Pindaan yang dibuat kepada s 3(b) Akta tersebut telah meluaskan kuasa Pihak Berkuasa Negeri, yakni sebuah Pihak Berkuasa Negeri kini boleh mengambil apa-apa tanah yang diperlukan oleh sesiapa atau mana-mana pertubuhan, untuk apa-apa tujuan yang pada pendapat Pihak Berkuasa Negeri adalah bermanfaat kepada pembangunan ekonomi Malaysia atau mana-mana bahagiannya atau kepada masyarakat awam pada umumnya atau mana-mana golongan masyarakat awam.

Dalam kes ini, satu daripada objek pengambilan adalah untuk tujuan pembinaan tambak yang kedua di antara Malaysia dan Singapura. Objek yang satu lagi untuk pengambilan adalah untuk tujuan memajukan kawasan Gelang Patah bagi memajukan perbandaran yang baru. Kewujudan perbandaran yang baru di kawasan Gelang Patah sudah tentunya akan menjadi sama seperti tujuan yang memanfaatkan pembangunan ekonomi bahagian Negeri Johor itu dan juga akan memanfaatkan masyarakat awam pada umumnya serta mereka yang menetap di kawasan sekeliling (lihat ms 146H–I dan 147B–E).

(2) Seksyen 8(3) jelas memperuntukkan bahawa perisytiharan dalam Borang D adalah muktamad atas tujuan tanah yang dijadualkan diambil yang akan bermakna bahawa Pihak Berkuasa Negeri

adalah hakim yang paling baik tentang apakah yang merupakan tujuan yang memanfaatkan pembangunan ekonomi dalam lingkungan s 3(b). Dalam kes ini, Pihak Berkuasa Negeri telah mengambil tanah dengan tujuan menggunakannya untuk tujuan yang diberi kuasa oleh perundangan dan dengan itu mahkamah tidak boleh menahannya daripada berbuat demikian. Tujuan pengambilan telah ditulis dalam perisytiharan dan adalah muktamad tentang kewujudan sebenar tujuan itu dan ia juga dinyatakan secara terang dengan secukupnya bagi memenuhi keperluan s 3(b).

Justeru itu, adalah tidak mungkin untuk mentaksahkan perisytiharan itu secara kolateral dengan menunjukkan bahawa niat untuk menggunakannya untuk tujuan yang diberitahu tidak wujud. Dengan itu, pemberitahuan pengambilan dijadikan akhir dan muktamad dan ini bermakna bahawa pemilik tanah yang terjejas di sebalik pemberitahuan jika tidak ia akan menjadikan s 8(3) tidak bermakna (lihat ms 147I dan 148A–E).

Tambahan pula, Akta tersebut mengurniakan kuasa yang luas ke atas Pihak Berkuasa Negeri untuk mengambil tanah dan telah mensyaratkan rumusan statutori yang khas yang mengecualikan kajian semula kehakiman; perkara-perkara yang hanya boleh dilitigasikan oleh mahkamah terhad kepada yang ditetapkan dalam Bah V Akta tersebut. Parlimen telah memperuntukkan apa yang difikirkannya mencukupi untuk menjamin pampasan yang memadai bagi pemilik tanah yang terjejas oleh pengambilan dan telah membiarkan Pihak Berkuasa Negeri memutuskan setakat manakah ia akan berguna kepada pihak berkuasa itu bagi melaksanakan kuasa statutorinya (lihat ms 148I); *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore* [1975] 1 MLJ 241 dan *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands and Mines, Penang* [1977] 2 MLJ 45 diikut.

(3) Cadangan plaintif untuk memajukan dan 'menukar' tanah tersebut kepada pembangunan perdagangan dan kediaman yang telah 'diluluskan dalam prinsip' oleh Menteri Besar memerlukan kelulusan rasmi oleh Majlis Eksekutif ('Exco') dengan itu cadangan akan menghendaki permohonan dibuat kepada Exco untuk penukaran penggunaan tanah di bawah peruntukan Kanun Tanah Negara 1965. Menteri Besar yang bertindak secara sendiri bukanlah Exco dan apa-apa kelulusan yang diberikan kepadanya sewaktu bertindak bersendirian tidak mengikat Exco. Beliau cuma bersidang atas Exco. Tiada sebarang merit dalam pengataan plaintif bahawa defendan-defendan dengan sengaja mengabaikan permohonan plaintif untuk pembangunan tanah tersebut. Pelan plaintif untuk memajukan tanah tidak boleh menjadi kenyataan melainkan kelulusan yang perlu daripada Exco telah diperolehi (lihat ms 151F–H).

(4) Selepas tamatnya prosiding pengambilan, tanah menjadi tanah Negeri dan Pihak Berkuasa Negeri diberikuasa memberimiliknya kepada orang atau pertubuhan berkenaan. Selepas pelupusannya oleh Pihak Berkuasa kepada orang atau pertubuhan berkenaan, orang atau pertubuhan adalah bebas melupuskan atau mengguna atau mengurus tanah bagi mencapai tujuan pengambilan dan menurut s 68A Akta tersebut tindakan demikian tidak menyebabkan pengambilan menjadi tak sah. Oleh itu, penegasan plaintif bahawa Pihak Berkuasa Negeri telah bertindak ultra vires kerana defendan ketiga bercadang memajukan tanah tersebut dalam cara yang serupa sepertimana yang dicadangkan oleh plaintif sendiri lebih awal lagi kepada Menteri Besar tidak mendedahkan sebarang kausa tindakan (lihat ms 152B–H, 153I dan 154A).

(5) Hujah plaintif bahawa perkara 13(1) Perlembagaan Persekutuan memberi perlindungan perlembagaan kepada hak plaintif untuk memiliki tanah tersebut adalah tidak relevan. Apabila Pihak Berkuasa Negeri mengambil apa-apa tanah berimilik, tindakan itu bagaikan melucutkan tuan tanah daripada tanahnya, tetapi ia bertindak menurut undang-undang, iaitu Akta tersebut sendiri. Akta tersebut jelas adalah undang-undang yang memperuntukkan pengambilan wajib tanah tetapi ia juga adalah undang-undang yang memperuntukkan bahawa tuan-tuan tanah yang telah dirampas harta mereka akan menerima pampasan yang memadai (lihat ms 153B–E).

(6) Tiada apa-apa dalam Akta tersebut yang mengenakan apa-apa obligasi untuk pembicaraan pra-pengambilan berbeza dengan peruntukan spesifik siasatan dan pembicaraan berkenaan dengan kuantum pampasan yang perlu dibayar (lihat ms 153H–I); *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 diikut.

(7) Selagi pliding mendedahkan sebarang kausa tindakan atau menimbulkan persoalan yang wajar diputuskan oleh hakim, fakta semata-mata bahawa kes adalah lemah dan tidak mungkin berjaya di perbicaraan bukanlah alasan untuk pliding dibatalkan. Hanya dalam kes-kes yang jelas sahaja bolehlah proses terus digunakan di bawah A 18 k 19(1).

Dalam kes ini, tindakan plaintif terhadap defendan pertama dan kedua 'jelas tidak boleh kekal'. Pliding tidak menimbulkan sebarang kausa tindakan atau pun menimbulkan apa-apa persoalan untuk diputuskan. Tambahan pula, s 8(1) Akta Relief Spesifik 1950 memperuntukkan bahawa sekiranya sesiapa yang telah dirampas harta tak alihnya tanpa kebenaran daripadanya *selain daripada menurut undang-undang* beliau boleh, melalui guaman, mengambil balik milikannya, dan s 8(3) memperuntukkan tiada guaman di bawah seksyen itu boleh dibawa terhadap mana-mana kerajaan di Malaysia. Disebabkan pengambilan oleh Pihak Berkuasa Negeri plaintif telah pun

dirampas tanahnya menurut undang-undang dan biar pun pada anggapan bahawa dia membuktikan terdapat niat jahat, dia tidak boleh membawa guaman terhadap Kerajaan Negeri Johor memandangkan peruntukan demikian (lihat ms 154E–I); *Abu Bakar bin Hj Yusuf v Mohamed Hamzah bin Hanafiah & Anor* [1978] 2 MLJ 78, *Moore v Lawson* (1915) 31 TLR 418 (CA); *Wenlock v Moloney & Ors* [1965] 1 WLR 1238; [1965] 2 All ER 871, *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86, *Attorney General of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274 dan *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1 diikut.

(8) Niat jahat dalam undang-undang adalah kelakuan salah yang melanggar hak plaintif dan niat jahat dalam fakta bermakna tidak lebih daripada motif tidak langsung. Pelaksanaan undang-undang sah oleh seseorang tidak menjadi haram kerana motif tindakan adalah tidak betul atau berniat jahat. Dalam kes ini, tiada terdapat pelanggaran hak plaintif kerana latihan pengambilan yang dilaksanakan menurut peruntukan Akta tersebut oleh Pihak Berkuasa atau mana-mana pekerja atau wakilnya tidak merupakan pelanggaran hak sama sekali. Di bawah keadaan-keadaan, plaintif tidak boleh mendakwa defendan-defendan pertama dan kedua sebagai pesalah apabila tiada kesalahan telah dilakukan oleh mana-mana defendan (lihat ms 155A–C); *Bradford Corp v Pickles* [1895] AC 587 diikut.

Obiter:

Andainya liabiliti cuba dibuktikan terhadap Pihak Berkuasa Negeri di bawah peruntukan Akta tersebut, pentadbir tanah dalam keupayaannya — dan bukan Kerajaan Negeri — haruslah dicantumkan dalam prosiding. Pendirian plaintif bahawa defendan pertama (iaitu Kerajaan Negeri Johor) dan/atau defendan kedua (iaitu Pentadbir Tanah, Johor) adalah Pihak Berkuasa Negeri seperti yang ditakrifkan dalam s 2(1) Akta tersebut adalah tidak betul (lihat ms 155E–F); *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 diikut.]

Notes

For cases on striking out statement of claim, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2711–2747.

For cases on acquistion of land, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1164–1309.

Cases referred to

Abu Bakar bin Hj Yusuf v Mohamed Hamzah bin Hanafiah & Anor [1978] 2 MLJ 78 (folld)

Allen v Flood [1898] AC 1 (refd)

A-G of Durchy of Lancaster v L & NW Ry Co [1892] 3 Ch 274 (folld)

Bradford Corp v Pickles [1895] AC 587 (folld)
Hubbuck & Sons v Wilkinson, Heywood and Clark [1899] 1 QB 86 (folld)
Imperial Tobacco Ltd & Anor v Attorney General [1981] AC 718 (refd)
Moore v Lawson (1915) 31 TLR 418 (folld)
Ng Chee Keong & Ors v Lembaga Letrik Negara & Anor [1991] 1 CLJ 567 (refd)
PP v Datuk Hj Harun bin Hj Idris (No 2) [1977] 1 MLJ 15 (refd)
S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204 (folld)
Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors [1995] 3 CLJ 114 (folld)
Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore [1975] 1 MLJ 241 (folld)
Tractors Malaysia Bhd v Tio Chee Hing [1975] 2 MLJ 1 (folld)
Wenlock v Moloney & Ors [1965] 1 WLR 1238 (folld)
Yew Lean Finance Development (M) Sdn Bhd v Director of Lands and Mines, Penang [1977] 2 MLJ 45 (folld)

Legislation referred to

Federal Constitution art 13(1)
Interpretation Acts 1948 and 1967 s 3
Land Acquisition Act 1960 ss 2, 3, 4, 7, 8, 10, 12, 14, 16, 22, 23, 24, 37, 38(1), 66
Land Acquisition (Amendment) Act 1991
National Land Code 1965 ss 5, 42, 52, 68A, 124, 204B, 204E
Revision of Laws Act 1968
Rules of the High Court 1980 O 18 r 19(1)(a), (b), (c), (d), (2)
Specific Relief Act 1950 s 8(1), (3)

Tommy Thomas (*Lim Chee Wee* with him) (*Skrine & Co*) for the plaintiff.
Zainal Adzam bin Abdul Ghani (Johor State Legal Adviser) and *Teo Say Eng* (Senior Federal Counsel) for the first and second defendants.
Zaki Tun Azmi (*Rashid & Lee*) for the third defendant.

Mohd Ghazali J: The plaintiff to this action, a locally incorporated private company, which was the registered proprietor of a piece of land comprising an area of 2,466 acres and known as Grant No 43821 Lot 1766, Mukim of Pulai, Johor ('the land') until it was acquired by the State Authority, Johor in 1993, has filed an action against the defendants on 3 August 1995 and in its statement of claim is asking for the following prayers:

(i) a declaration that the decision by the State Authority to acquire the land is null and void and of no effect;

(ii) an interlocutory injunction until further order or trial to restrain the third defendant (a locally incorporated company) or its agents or servants or otherwise howsoever from registering itself or its nominees as the registered proprietor of the land, or taking any steps which

may result in such registration, and a permanent injunction at the trial to the same effect;

(iii) an order that the endorsement of the purported acquisition of the land on the register document of title be expunged within 14 days of an order of the court;

(iv) an order that the issue document of title of the land be delivered to the plaintiff, without the endorsement referred in relief (iii) above, within 14 days of an order of the court;

(v) a declaration that an agreement entered into between the plaintiff and the third defendant on 22 June 1995 ('the Harvest Agreement') is null and void;

(vi) an interlocutory injunction until further order or trial restraining the third defendant or its agents or servants or otherwise from entering into physical possession of the land or any part thereof; and

(vii) damages and costs.

The first and second defendants to this action have filed an application (encl 8) pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980 requesting for an order that the pleading, ie the statement of claim, be struck out on the ground that it discloses no reasonable cause of action. The third defendant has also filed a similar application (encl 10) but based upon O 18 r 19(1)(a), (b), (c) and (d) of the said rules and in the course of it, both the third defendant and the plaintiff have filed affidavits. Both the applications were fixed for hearing on the same date but on that date, seeing that O 18 r 19(2) provides that no evidence shall be admissible on an application made under O 18 r 19(1)(a), I decided that I will only hear the application of the first and second defendants on that date and adjourned the hearing of the application of the third defendant to another date. Accordingly, this decision is based only upon the subject matter of the application of the first and second defendants.

Order 18 r 19(1)(a) and (2) reads:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be; or ...
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
>
> (2) No evidence shall be admissible on an application under paragraph (1)(a).

In an application made under this rule, the only document that can be referred to would be the pleadings and in the instant case, the only pleading available is the statement of claim. Paragraph 3 of the statement of claim states that:

> The first defendant and/or the second defendant is the State Authority for the State of Johor as defined in s 2(1) of the Land Acquisition Act 1960 ('the

A Act') or otherwise and is sued in this action in that capacity (hereinafter jointly and/or severally referred to as 'the State Authority').

The plaintiff claims that in early 1990, it decided to develop and convert the land, which was cultivated with oil palm, into a mixed commercial and residential development and, consequently on 10 June 1990, its B representatives met the then Menteri Besar of Johor to discuss its plans for such development. In para 9 of the statement of claim, the plaintiff states that the Menteri Besar 'was at all material times the Head of the Government of Johor and effectively exercised the powers and discretion conferred on the State Authority' under the Land Acquisition Act 1960 ('the Act') 'sometimes albeit in the name of the Sultan'. Subsequently on 19 July C 1990, the plaintiff submitted detailed plans for the development of the land to the 'Department of Lands and Mines, Johor'.

On 27 July 1990, the plaintiff's representatives again met the Menteri Besar and handed a letter which contained a detailed proposal to develop the land and at this meeting, the Menteri Besar wrote the following on the D said letter, namely, 'I agree in principle with this application. The Lands and Mines Department is to expedite'. The plaintiff claims that as a result of this, the Lands and Mines Department took action the next day and requested seven departments of the Government of Johor to process the development plan submitted by the plaintiff but up to this date it has not been informed of the status of its application.

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The plaintiff then claimed that on 12 November 1992, United Engineers Bhd ('UEM'), a public limited company, entered into an agreement with the Government of Malaysia and the State Government of Johor with respect to the design, construction and the operation of a second causeway between Malaysia and Singapore and the development of F a new town in south-west Johor and, consequently on 3 December 1992, a notification in Form A pursuant to s 4 of the Act was issued notifying that the lands described in the schedule to that notification, which purportedly included the land, are likely to be acquired for the purpose of the second causeway project and the development of the surroundings. G Subsequently, on 7 April 1993, UEM entered into an agreement with the State Government of Johor for the proposed acquisition of approximately 10,921 hectares of land in south-west Johor for the purpose of developing the new township and that it was a term and condition of the agreement that UEM will pay the compensation which has to be paid to the affected land owners.

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On 24 June 1993, a notification in Form D pursuant to s 8 of the Act was issued by the Commissioner, Lands and Mines Office, Johor declaring that the lands specified in the schedule to the notification, which included the land, are needed for the purpose of the 'Second Malaysia, Singapore Causeway project and the Development of the Gelang Patah area' and on I 28 July 1993 an endorsement was made on the register document of title of the land with regard to the acquisition.

On 23 March 1995, after making a full enquiry pursuant to s 12 of the Act, the Land Administrator issued Form H pursuant to s 16 of the

Act, which is a notice of award and offer of compensation to an affected landowner, awarding compensation in the sum of RM89,658,000 to the plaintiff, which the plaintiff claims worked out to about RM35,000 per acre or about 80 cent per square foot and on 12 August 1995 the plaintiff received partial compensation in the sum of RM67,243,500 for the acquisition. The plaintiff has filed an application in Form N, pursuant to s 38(1) of the Act requesting that its objection to the amount of the compensation awarded be referred to the court for its determination.

Meanwhile, in June 1995, negotiations regarding the occupation and use of the land were held between the plaintiff and the third defendant which, according to the plaintiff, is a member of the Renong Group of Companies of which UEM is also a member and on 22 June 1995 the plaintiff and the third defendant entered into an agreement ('the Harvest Agreement') wherein it was agreed that the plaintiff will retain physical possession of the land until further notice but is obliged to pay to the third defendant a security deposit of RM255,000 and monthly rental of RM127,400. However, after the execution of that agreement, 'it came to the knowledge' of the plaintiff that the third defendant was proposing to develop the land in a very similar manner as the plaintiff had itself proposed in its development plan and that the third defendant was offering for sale the land at RM17 per square foot.

As a result of the above circumstances, the plaintiff contends that the State Authority had acted ultra vires the provisions of s 3 of the Act when it purported to issue the said Forms A and D (referred to above) and in consequence, the decision of the State Authority in acquiring the said land is a nullity and not binding in law.

The particulars of ultra vires as alleged by the plaintiff are:

(i) the State Authority has misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition of the said land 'is beneficial to the economic development of Malaysia ... or to the public generally' within the meaning of s 3(b) of the Act;

(ii) the purpose declared in the said Forms A and D do not come within the meaning of the expression 'is beneficial to the economic development of Malaysia ... or to the public generally' within the meaning of s 3(b);

(iii) that by virtue of (i) and (ii) above, the State Authority had no power in law to acquire the land; and

(iv) that the State Authority failed and/or refused to take into account at all or sufficiently three relevant considerations, viz:

  (a) that the plaintiff is, and was, in as good a position as the Renong Group to develop the land for 'the economic development of Malaysia ... or of the public' within the meaning of s 3(b);

  (b) that the plaintiff had in fact submitted a development plan to the State Authority, which if approved, would have contributed to 'the economic development of Malaysia ... or of the public' within the meaning of the s 3(b); and

(c) that art 13(1) of the Federal Constitution gives constitutional protection to the plaintiff's right to ownership to the land.

The plaintiff alleged that the State Authority took into account an irrelevant consideration, namely, that the land was required for the construction of the second causeway when in fact the land is situated several miles away from the site of the causeway and cannot reasonably be required for that purpose. The plaintiff also alleged that the decision of the State Authority is unreasonable and a nullity and further or alternatively contended that, as the true beneficiary of the purported acquisition is the third defendant, there is a duty in law for the State Authority to give the plaintiff an opportunity of being heard before it took the decision to acquire the land and, that by failing to do so, has acted in breach of the rules of natural justice by failing to give the plaintiff such a 'pre-acquisition hearing' thereby rendering its decision a nullity.

The plaintiff also alleged that the decision of the State Authority was taken in bad faith, the particulars of which are the following:

(i) that the Menteri Besar and the officers of the relevant government departments of the State Authority had actual knowledge of the plaintiff's plan to develop the land;

(ii) that the Renong Group had actual knowledge of the plaintiff's plan to develop the land;

(iii) that the State Authority and the Renong Group were using confidential information and/or insider information known to them to their advantage and to the detriment and prejudice of the plaintiff;

(iv) that the defendants deliberately and wilfully disregarded the plaintiff's application for development of the land;

(v) that the ultimate beneficiary of the purported acquisition is the third defendant whose shareholders are the Renong Group and the State Secretary, Johor and thus the State Authority directly benefits from the acquisition resulting in the decision being tainted and a colourable one;

(vi) that the State Authority and the Renong Group would unfairly reap huge financial rewards from the purported acquisition to the detriment and prejudice of the plaintiff;

(vii) that the purported acquisition amounts to a conversion of the plaintiff's property; and

(viii) that the decision is so perverse that it is not merely a 'malice in law' but also a 'malice in fact'.

By virtue of the above circumstances, the plaintiff contended that the State Authority acted in flagrant abuse of its powers and/or oppressively, arbitrarily or unconstitutionally and that as a result of the injury or loss that it has suffered, is entitled to recover damages from each of the defendants.

In this action, it is clear that an attack is made upon the validity of a purported acquisition by the State Authority, Johor and the substantial question is whether the declared purpose of the acquisition, namely, 'Second Malaysia, Singapore Causeway project and Development of the

Gelang Patah area', falls within the purposes which are allowable under the Act and whether it is open to the plaintiff as an affected landowner to attempt to invalidate the acquisition. The main bone of contention as found in the statement of claim is that the State Authority has misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition 'is beneficial to the economic development of Malaysia ... or to the public generally' within the meaning of s 3(b) of the Act.

It is of course clear that the Act allows the State Authority to acquire alienated lands for purposes which fall within the contemplation of s 3. Section 3(b) which was amended by the Land Acquisition (Amendment) Act 1991 (Act A804) and which came into force on 13 September 1991 reads:

> The State Authority may acquire any land which is needed —
>
> ...
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; ... .

Prior to its amendment, s 3(b) read as follows:

> The State Authority may acquire any land which is needed —
>
> ...
>
> (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; ... .

Section 2 of the Act provides that the word 'land' means alienated land within the meaning of the State land law, land occupied under customary right and land occupied in expectation of title. In the instant case, it is not disputed that the land is alienated land. The Act begins by authorizing the State Authority to acquire any land for any of the purposes provided in s 3. The power is to be carried out by the machinery which is provided for in s 4 onwards and that machinery consists, inter alia, in a notification in the *Gazette* which must declare the purpose. The procedure can be summarized as follows:

(1) Whenever the State Authority is *satisfied* that any land in any locality in the State is likely to be needed for any of the purposes referred to in s 3, a notification in Form A shall be published in the Gazette.

(2) The land administrator shall then prepare and submit to the State Authority a plan of the whole area of such lands showing the particular lands which it will be necessary to acquire and a list of such lands in Form C (s 7).

(3) When the State Authority *decides* that any of the lands are needed for any of the purposes referred to in s 3, a declaration in Form D shall be published in the Gazette and a list of the lands shall be included as a schedule to the declaration (s 8).

(4) The land administrator shall then commence proceedings for the acquisition of the land by giving public notice in Form E and by

A fixing the date of an inquiry for the hearing of claims to compensation for all interests in such land (s 10).

(5) On the date appointed under s 10, the land administrator shall make full enquiry into the value of all the scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his B opinion is appropriate in each case according to the consideration set out in the First Schedule to the Act (s 12).

(6) Upon the conclusion of the enquiry, the land administrator shall prepare a written award under his hand in Form G (s 14).

(7) On making any award under s 14, the land administrator shall C prepare and serve on each person interested in such land a notice in Form H (s 16) and consequently the land administrator may then take formal possession of any scheduled land by serving on the occupier or by posting thereon a notice in Form K (s 22).

(8) The proper registering authority, upon receipt of the notice in Form K, D or the land administrator of his own motion after completing Form K, shall, upon the register document of title or other appropriate record in his possession make, with respect to any scheduled land, a memorial —

(a) that the whole of such land has been acquired and has vested in the State Authority; or

E

(b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired (s 23);

and upon the making of such a memorial the land shall vest in the State Authority as State land free from encumbrances (s 66).

F (9) Where the issue document of title or other deed evidencing title to any scheduled land has not previously been delivered to him, the Land Administrator shall by a notice in writing in Form L require any person in whose possession such document or deed may be, to deliver such document or deed to him; that person shall be legally bound to deliver it (s 24).

G (10) Where the land owner or any person interested in the scheduled land has not accepted the land administrator's award or has accepted payment of the amount of award under protest as to the sufficiency thereof, he may make objection to, inter alia, the amount of the compensation by a written application in Form N to the land H administrator requiring that he refer the matter to the court for its determination (ss 37 and 38).

Section 1 of the First Schedule to the Act provides the principles relating to the determination of compensation, viz the landowner will be compensated by the market value of such land. Section 3 of the First I Schedule provides that in determining the amount of compensation to be awarded, certain matters shall not be taken into consideration, inter alia, any disinclination of the landowner to part with the land acquired.

As stated earlier, by its action, the plaintiff is asking for a declaration that the decision by the first and second defendants, which he claims is the

'State Authority' for the State of Johor, to acquire the land is null and void and of no effect as the purpose declared in the said declaration do not come within the meaning of s 3(b) of the Act. An action for a declaration is of course a means of challenging administrative acts and decisions which a plaintiff claims to be unlawful.

The Act allows a State Authority to acquire any alienated land for any purpose which falls within the contemplation of s 3 and, looking at the provisions of the Act, I am of the view that it is a wide power. Parliament has provided in the Act what it considers sufficient means for securing adequate compensation to land owners affected by the acquisition and has left it to the State Authority to say to what extent it will be useful to that authority to exercise its statutable powers.

In the instant case, the declaration in Form D states that the scheduled lands are to be acquired for the purpose of the second Malaysia-Singapore causeway project and for the development of the Gelang Patah area. The issue is whether that stated purpose falls within the contemplation of s 3(b). It is clear that the amendment made to s 3(b) has widened its scope even further. Prior to its amendment, s 3(b) authorizes a State Authority to acquire any land which is needed by a *person* or *corporation undertaking a work* which in the opinion of the State Authority is of *public utility*. According to s 3 of the Interpretation Acts 1948 and 1967, the word 'person' includes 'a body of persons, corporate or unincorporate' and according to Vol 1 of *Jowitt's Dictionary of English Law* (2nd Ed) the word 'corporation' means 'a succession or collection of persons having in the estimation of the law an existence and rights and duties distinct from those of the individual persons who form it from time to time'. To me, the words 'person' or 'corporation' as found in the Act, either way, would include, inter alia, companies registered under the Companies Act 1965.

Thus, prior to that amendment, it would seem that the State Authority is authorized to acquire any land even for a company undertaking a work which in the opinion of the State Authority is of public utility. This would of course encompass companies which have been incorporated to carry on undertakings which were formerly undertaken by statutory bodies, eg the supply of electricity by the former Lembaga Letrik Negara whose undertaking has now been taken over by a company called Tenaga Nasional Bhd.

It is my view that the amendment made to s 3(b) in 1991 has further enhanced or have widened the powers of a State Authority, viz a State Authority may now acquire any land which is needed by any person or corporation, which would of course include companies registered under the Companies Act 1965, *for any purpose* which in the opinion of the State Authority is *beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public*. These words are wide and would seem to encompass a host of activities not merely restricted to undertakings of works which are of public utilities. As long as the project or proposed development is, in the opinion of the State Authority, beneficial to the economic development of the country or to the State

concerned or to the public or any class of public and that land is needed within the vicinity of the targetted area to carry out such a project or development, the State Authority is authorized under the said s 3(b) to acquire such land. The purpose can be anything as long as it is in the opinion of the State Authority economically beneficial to the country, the State or to the public or any class of public.

In the instant case, one of the objects of the acquisition, according to the declaration issued under s 8, is for the purpose of the second causeway project, viz the proposed construction of a second causeway between Malaysia and Singapore. The other object of the acquisition is for the purpose of developing the Gelang Patah area which according to the plaintiff is to develop a new township. According to the statement of claim, the agreement between the Federal Government and the State Government of Johor and UEM is that the lands acquired are needed for the design, construction and the operation of the new causeway and the development of a new township, which I gather will be sited in the Gelang Patah area.

I would think that the creation of a new township in the Gelang Patah area would definitely amount to a purpose which is beneficial to the economic development of that part of the State of Johor and would also be beneficial to the public generally and also that part of the public residing within the surrounding areas. The public or that part of the public would definitely benefit economically from such a development, eg if industries are sited within the township, jobs will be created resulting in opportunities for more commercial activities, the cumulative effect of which would enhance the economic development of that part of the State. Consequently, the siting of industries adjacent to the township may enhance further bilateral trade between Malaysia and Singapore due to its proximity to the second causeway and inevitably the accessibility of various facilities available in the two countries and this would be beneficial to the economic development of Malaysia as a whole.

To me, the plaintiff's contention that the land is situated several miles away from the proposed causeway is irrelevant. The said declaration clearly refers to two objects and whether the land is situated within the vicinity of the proposed causeway or the township is immaterial. What really matters is that the said land form part of the scheduled lands. The plaintiff's contention that it is, and was, in as good a position as the Renong Group to develop the land for the purpose within the meaning of s 3(b) is also irrelevant. To me, this contention seems to suggest that the plaintiff is not seriously disputing that the purpose as stated in the declaration falls within the contemplation of s 3(b).

Anyway, s 8(3) of the Act provides that a declaration in Form D shall be conclusive evidence that all the scheduled lands referred to therein are needed for the purpose specified therein. That provision clearly provides that the declaration in Form D is conclusive as to the purpose for which the scheduled lands are required which would mean that Parliament has decided that the State Authority is the best judge to determine what amounts to a purpose which is beneficial to economic development within

the contemplation of s 3(b). In the instant case, the State Authority for the State of Johor has taken the land with the object of using it for a purpose authorized by the legislature and I do not think that the court can restrain the State Authority from doing so. The purpose of the acquisition has been spelt out in the said declaration and was conclusive of the actual existence of that purpose and it was also sufficiently specific to satisfy the requirements of s 3(b).

A declaration in Form D must be conclusive if the meaning of the Act is to be effective. Since it is conclusive evidence as stated in s 8(3), I cannot see how it is possible to invalidate it collaterally by showing that an intention to use it for the purpose notified did not exist. If the declared purpose falls outside s 3(b) of the Act, the acquisition must fail but looking at the said declaration vis-a-vis s 3(b), I cannot see how that can be possible. As discussed earlier, the current s 3(b) is so wide that it encompass a host of activities which may in the opinion of the State Authority bring economic benefit to the country or to the public and the building of a second causeway between Malaysia and Singapore and the development of a new township within the surrounding areas will definitely bring about such an effect.

Whether that is the purpose or is not the purpose is a matter depending entirely upon the mind and policy of the State Authority and it must be remembered that it is an exercise of a discretionary power conferred by statute. The notification of acquisition is made decisive and concludes the whole matter and it follows that an affected landowner may not go behind the notification otherwise it makes s 8(3) meaningless. In *Ng Chee Keong & Ors v Lembaga Letrik Negara & Anor* [1991] 1 CLJ 567 at p 569, Lim Beng Choon J said:

> In any case, if the plaintiffs were challenging the validity of the acquisition, they are precluded from doing so by a writ action because under the provisions of the Land Acquisition Act 1960, the only matters that can be litigated by the court are limited to matters as prescribed in Part V of the said Act, namely:
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> (a) the measurement of the land;
>
> (b) the amount of compensation;
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> (c) the person to whom it is payable; and
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> (d) the appointment of the compensation.
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> (see s 37 of the said Act).

As stated earlier, an action for a declaration is a means of challenging administrative acts and decisions which a plaintiff claims to be unlawful and in *Imperial Tobacco Ltd & Anor v Attorney General* [1981] AC 718 at p 750, Lord Lane said:

> Anyone is on principle entitled to apply to the court for a declaration as to their rights unless statutorily prohibited expressly or by necessary implication.

The Act allows the State Authority to acquire alienated lands for purposes which fall within the contemplation of s 3 and it is a wide power and Parliament has prescribed a special statutory formulae which ostensibly excludes judicial review; the only matters that can be litigated by the court

are limited to those prescribed in Pt V of the Act. Parliament has provided what it considers sufficient means for securing adequate compensation to the landowners affected by the acquisition and has left it to the State Authority to say to what extent it will be useful to that authority to exercise its statutory powers.

In *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore* [1975] 1 MLJ 241, the High Court dismissed the plaintiff's application for a declaration that acquisition proceedings in respect of their lands were illegal and null and void. In that case, the declaration in Form D states that the scheduled lands were required for 'Pembenaan Pelabohan, Perumahan dan Perusahaan'. The plaintiff appealed to the Federal Court and in dismissing the appeal, Suffian LP said that the declaration issued under s 8 of the Act was conclusive evidence that the lands referred to therein were needed for the purpose specified therein and therefore there was no merit in the contention that the acquisition proceedings were null and void. The plaintiff had alleged, inter alia, that although the scheduled lands were needed for a harbour, for housing and for industry, their lands were not demarcated for any of the three purposes but instead were marked for 'kegunaan khas' (special purposes) which was not a purpose enumerated in s 3 of the Act and that as their lands were not needed for any of the purposes authorized by s 3, the intended acquisition was null and void; the plaintiffs also alleged that the state government was acting mala fide. At p 245 Suffian LP said:

> Though the Johore State Government had written 'kegunaan khas' against the applicants' lands, finally they were acquired for a shipyard and it is argued that this change of intention on the part of government also invalidates the acquisition proceedings. With respect, we do not think that there is any merit in this argument either, for use as a shipyard is still use for an industrial purpose which is specified in the first para of Form D.

In *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands and Mines, Penang* [1977] 2 MLJ 45, the main issue before the court was whether the notice stating that the land was being acquired for residential, industrial and public purposes was null and void because it was vague and did not particularize the specific purpose. At p 46 Arulanandom J said:

> ... [the] government is the sole authority to decide what is, or, what is not, a public purpose, and the decision by the government in this respect cannot be questioned by a civil court ...

and at p 47, he said:

> It is therefore quite clear that once a Gazette notification under s 8 is given, it is conclusively established that the lands are needed for the purpose stated. The only complaint the owners of acquired lands can have will be if provisions of the Act have not been complied with. Furthermore, if the compensation awarded them is not adequate, they have a right to appeal to the High Court. Apart from that, the question of acquisition cannot be gone into.

The above authorities confirm that the declaration under Form D is conclusive as to the purpose for which the land is required and that the State Authority is the best judge to determine what is the purpose.

In the instant case, the plaintiff has also alleged that the decision of the State Authority to acquire the land was taken in bad faith, namely, that the Menteri Besar, the officers of the relevant government departments, the State Authority and also the Renong Group knew about the plaintiff's plan to develop the land. It also alleged that the defendants deliberately and wilfully disregarded its application to develop the land. A B

The above allegation seems to have stemmed from the approval in principle given by the then Menteri Besar in 1990 to the plaintiff's proposal to develop the land. Looking at the provisions of the National Land Code 1965 ('the Code'), I do not think that such an approval in principle can at all amount to an approval which binds the State Authority. The land was cultivated with oil palm and this would denote that its category of land use prior to the acquisition was 'agriculture'. The plaintiff stated that it decided to develop and convert the land into 'a mixed commercial and residential development'. That, according to the Code, would require an approval of the State Authority, namely, for the alteration of that category of land use of 'agriculture' to 'building' or 'industry' as provided for under s 124 of the Code read together with s 52 of the Code or alternatively would require an approval from the State Authority for surrender and re-alienation of the land under ss 204B to 204E of the Code. The approval or rejection of an application made either way shall be at the discretion of the State Authority and a Menteri Besar, with respect, is not the State Authority. C D

In the statement of claim, there seems to be some confusion as to who is the State Authority. Section 2 of the Act provides that the words 'State Authority' means 'the Ruler or the Yang di-Pertua Negeri of the State, as the case may require'. Section 5 of the Code provides that the words 'State Authority' means 'the Ruler or Governor of the State, as the case may be'. Incidentally, s 3 of Pt I of the Interpretation Acts 1948 and 1967 which applies to all laws, whether enacted before or after the commencement of the Interpretation Act 1967, revised under the Revision of Laws Act 1968, provides that the words 'State Authority' means 'the Ruler or Yang di-Pertua Negeri of a State and includes, in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs'. Article I of the Second Part of the Law of the Constitution for the State of Johor provides that the word 'Ruler' means 'His Highness the Sultan'. As a consequence of adopting constitutional monarchy, the Sultan is vested with the executive authority of the State but as a constitutional ruler he is to act in accordance with the advice of the Executive Council ('Exco') or a member thereof acting under the general authority of the Exco. The relevant articles of the State Constitution reads: E F G H

Article II

(1) The executive authority of the State shall be vested in the Ruler but executive functions may by law be conferred on other persons or authorities.

(2) All executive authority of the State shall be expressed to be taken in the name of the Ruler. I

A Article VII

(1) In the exercise of his functions under the Constitution or *any law* ... the Ruler shall act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council ... . (Emphasis added.)

B Article IV(1) provides that the Ruler shall appoint an Executive Council and article IV(2)(a) and (b) provides that the Ruler shall appoint — as Menteri Besar to preside over the Executive Council — a member of the Legislative Assembly and that the Ruler shall on the advice of the Menteri Besar appoint not more than eight members from among the members of the Legislative Assembly to sit on the Exco. The same article also provides C that the Exco shall be collectively responsible to the Legislative Assembly. Article VI provides that the persons who are holding the posts of the State Secretary, State Legal Adviser and State Financial Officer respectively shall have the right to take part in the proceedings of the Exco but shall not have any vote.

D In the exercise of his functions under the law, the Ruler shall act in accordance with the advice of the Exco and this would of course encompass the powers that the Ruler, as the State Authority, have under the Act and the Code. As stated by Raja Azlan Shah FJ (as he then was) in *PP v Datuk Hj Harun bin Hj Idris (No 2)* [1977] 1 MLJ 15 at p 20:

E It is the Executive Council who is the executive organ of the State Authority and exercise executive functions in the name of the Ruler.

Thus, from the above provisions of the law, it is clear that the plaintiff's proposal to develop and 'convert' the land into a mixed commercial and residential development which has been 'approved in principle' by the F Menteri Besar would require a formal approval from the Exco as such a proposal would necessitate an application to the Exco for an alteration of category of land use under the provisions of the Code. The Menteri Besar acting alone is not the Exco and any approval given by him whilst acting alone cannot bind the Exco. He only presides over the Exco. That being the position, I cannot find any merit in the plaintiff's allegation that the G first and second defendants have deliberately and wilfully disregarded the plaintiff's application for development of the land. The plaintiff's plan to develop the land can never materialize unless the necessary approvals from the Exco have been obtained.

The statement of claim also reveals that the acquisition exercise, H which affected the land, involved 10,921 hectares of land. The land, according to the plaintiff, comprise an area of 2,466 acres which according to my calculations is equivalent to approximately 998 hectares or about 9% of the scheduled lands. The plaintiff has alleged that the third defendant, which seems to me to be an entity presently having some form of control I over the land as evidenced by the Harvest Agreement, is proposing to develop the land in a very similar manner as the plaintiff had itself earlier proposed to the Menteri Besar, and is now offering the land for sale at RM17 per square foot whereas the compensation awarded to the plaintiff

for the acquisition of the land was merely equivalent to about 80 sen per square foot. I find it necessary to refer to this averment as the plaintiff has contended that this is one of the circumstances which show that the State Authority had acted ultra vires the provisions of s 3 of the Act.

I cannot see any merit in the above contention. It must be remembered that upon completion of the acquisition proceedings pursuant to the provisions laid down in the Act, the scheduled lands, according to s 66 of the Act, vest in the State Authority. Upon vesting, it becomes 'State land'. State land is not defined in the Act. However, s 2 of the Act provides that 'State land law' means 'the State law for the time being in force relating to land and land tenure and the registration of title thereto and the collection of revenue therefrom' which to me would mean the Code, an Act which applies to the State of Johor, and s 5 of the Code provides 'State land' means 'all land in the State ... other than:

(a) alienated land;

(b) reserved land;

(c) mining land; and

(d) any land which, ... is for the time being reserved forest.

Based upon the above provisions of the law, it is clear that any land acquired under the Act becomes State land and s 42 of the Code provides that the State Authority shall have power to alienate any State land in accordance with the provisions of the Code. In relation to the allegation that the State Authority has acted ultra vires, I do not wish to touch upon the rationality of the Harvest Agreement which inevitably would lead to the question as to whether the third defendant has the locus standi to deal with the land, ie whether the land has been alienated to them, as this issue has no bearing on the application before me.

The Act allows the State Authority to acquire any land which is needed by any person or corporation for any purpose within the contemplation of s 3(b) and upon completion of the acquisition proceedings, it becomes State land and the State Authority is authorized to alienate it to the person or corporation concerned. Upon its disposal by the State Authority to the person or corporation concerned, that person or corporation is at liberty to dispose or use or deal with the land to achieve the purpose of the acquisition and according to s 68A of the Act, such action cannot invalidate the acquisition of the land. Section 68A reads:

> Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

That section was introduced into the Act by the same Amendment Act A804 which amended s 3(b) and I would think that the intention of the legislature was clear when it introduced s 68A; thus the person or corporation on whose behalf the land was acquired is at liberty to

A subsequently dispose off the land and that action shall not invalidate the acquisition, which, to me, would imply that the acquisition cannot be challenged if such an event occurs. That being the case, I find that even if I assume that the averments of ultra vires in the statement of claim are correct, I cannot see how such averments can disclose a cause of action.

B In his submission, counsel for the plaintiff has also contended that art 13(1) of the Federal Constitution gives constitutional protection to the plaintiff's right to ownership of the land. Article 13 reads:

> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property
> C without adequate compensation.

With respect, I do not see the relevance of this reference at all. There are two clauses in that article and they are not in effect mutually exclusive (*S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204). When a State Authority acquires any alienated land,
D that action of course amounts to depriving the landowner of his land but then it is acting *in accordance with law*, namely the Act itself. The Act is clearly a law which provides for the compulsory acquisition of land but it is also a law which provides that the dispossessed landowner will receive adequate compensation, ie the State Authority shall compensate the owner
E for the land at its market value (First Schedule to the Act). The category of land use applicable to the scheduled land at the date of its acquisition is also an important factor in assessing the amount of compensation to be paid. Section 1(2) of the First Schedule provides:

> In assessing the market value —
>
> F the effect of any express or implied condition of title restricting the use to which the scheduled land may be put shall be taken into account.

This would mean that if the title to the land concerned states that its category of land use is 'agriculture', the compensation paid would be the market value of land with that category of land use; the value would of
G course have to be assessed in accordance with the principles relating to valuation as practised and which have been accepted by the courts.

Incidentally, the plaintiff has also alleged that the State Authority has acted in breach of the rules of natural justice by failing to give the plaintiff a 'pre-acquisition hearing' thereby rendering its decision a nullity. I do not
H propose to go into this. It has been settled in *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* that there is nothing in the Act imposing any obligation for a pre-acquisition hearing in marked contrast to the specific provisions of an inquiry and hearing in respect of the quantum of compensation payable, and that being so, I cannot see any
I merit in the above contention.

In relation to this application, which is made under O 18 r 19(1)(a), the only issue before me is whether the statement of claim discloses a cause of action and after looking at the totality of the averments found in the

statement of claim, I am of the view that the pleading does not disclose any cause of action at all in order to maintain the plaintiff's suit against the first and second defendants. In opposing the application, counsel for the plaintiff cited the case of *Abu Bakar bin Hj Yusuf v Mohamed Hamzah bin Hanafiah & Anor* [1978] 2 MLJ 78 which dealt with O 25 r 4 of the Rules of the Supreme Court 1980 — that rule empowers the court to strike out a pleading where the pleading discloses no reasonable cause of action — and at p 79 the judge said:

> As a general rule, the order under the above is an interlocutory order. It is only in plain and obvious cases that recourse should be had to this summary procedure. The mere fact that the case is weak and unlikely to succed is no ground for striking out a pleading.
>
> The next point is to consider to what extent the court is entitled to examine while exercising its power. Under O 25 r 4, where the allegation is that the statement of claim discloses no reasonable cause of action, only the plaint and its documents alone should be considered and all allegations in it should be assumed to be true. That was held by the Court of Appeal in *Peck v Russel & Ors* (1923) 4 FMSLR 32.

I am aware that it has been said that so long as the pleading discloses some cause of action or raises some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleading to be struck out (*Moore v Lawson* (1915) 31 TLR 418 (CA); *Wenlock v Moloney & Ors* [1965] 1 WLR 1238; [1965] 2 All ER 871 (CA)). It has also been said that it is only in plain and obvious cases that recourse should be had to this summary process under O 18 r 19(1) (*Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86) and that this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (*A-G of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274 (CA)). In *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1, Lord Diplock said:

> The power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with the utmost caution.

But in the face of statutory prohibitions expressly or necessarily implied in the Act as discussed above, and after having cautioned myself, I am of the view that the plaintiff's action against the first and second defendant is 'obviously unsustainable'. The pleading does not at all disclose some cause of action or even raise any question fit to be decided. Furthermore, s 8(1) of the Specific Relief Act 1950 provides that if any person is dispossessed without his consent of immovable property *otherwise than in due course of law* he may, by suit, recover possession thereof and s 8(3) provides that no suit under this section shall be brought against any government in Malaysia. The plaintiff has, by virtue of the acquisition by the State Authority, been dispossessed of its land *in due course of law* and even if assuming that he proves that there was malice, I cannot see how he can bring a suit against the State Government of Johor in the face of such a provision.

A The plaintiff has in fact alleged that there was malice in law and malice in fact. Malice in law is wrongful conduct which violates a right of the plaintiff and malice in fact means no more than an indirect motive. In *Allen v Flood* [1898] AC 1 at p 29, Cave J said 'malice alone never constitutes a cause of action, or, in other words does not make that a wrong which otherwise would not be a wrong'. In *Bradford Corp v Pickles* B [1895] AC 587, the judge said that the exercise by a person of a legal right does not become illegal because the motive of action is improper or malicious. In the instant case, there has been no violation of the plaintiff's rights as an acquisition exercise carried out pursuant to the provisions of the Act by the State Authority or any of its servants or representatives cannot C at all amount to a violation of a right. Under the circumstances, I am unable to see how the plaintiff can sue the first and second defendants as wrongdoers when no wrong has been committed by either defendant.

Even assuming that the averments in the plaintiff's pleading are correct, I find that the suit against the first and second defendants is D unmaintainable and accordingly I allow the first and second defendants' application to strike out the pleading as against them, with costs.

As to whether the first defendant is a necessary or a correct party to this suit has not been raised or argued by the learned State Legal Adviser who appeared for that party. I would like to reiterate the stand that I have taken in the case of *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & E Ors* [1995] 3 CLJ 114, namely, that if it is sought to establish liability against the State Authority under the provisions of the Act, it should be the land administrator in his office — the State Government should never have been joined in these proceedings. I am also of the view that the plaintiff's stand that the first defendant, ie the State Government of Johor F and/or the second defendant, ie the Land Administrator, Johor is the State Authority as defined in s 2(1) of the Act (para 3 of the statement of claim) is incorrect.

Application allowed with costs.

G *Application allowed.*

Reported by Kanesh Sundrum

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